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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,452	04/04/2001	Raleigh J. Jensen	ACE106.02	8028
7590 08/11/2004			EXAMINER	
Joseph W. Holland P.O. Box 1840 Boise, ID 83701-1840			DEXTER, CLARK F	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/826,452

Applicant(s)

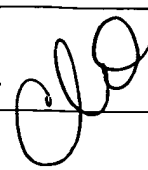
JENSEN, RALEIGH J.

Examiner

Clark F. Dexter

Art Unit

3724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The appeal brief filed on April 26, 2004 has been received. Upon careful reconsideration of claims 1-7, particularly in view of applicant's arguments and the discovery of the newly cited references, the prior art rejection has been withdrawn and a new grounds of rejection is necessary. Because this new grounds of rejection was not necessitated by applicant's amendment, this Office action is being made **non-final**.

#### *Claim Objections*

2. Claims 1-7 are objected to because of the following informalities:

In claim 1, line 12, it seems that a comma --,-- should be inserted after "cutting head" or the like for clarity.

In claim 2, line 2, "further" is unclear as to what it refers (i.e., the cutting tensioning device has not been defined as "comprising" anything, thus it does not seem appropriate that "further comprising" should be recited), and it is suggested to simply delete "further".

In claim 4, line 2, "further" is unclear as to what it refers and it seems that it should be deleted.

In claim 6, line 2, "further" is unclear as to what it refers and it seems that it should be deleted.

In claim 7, line 2, "further" is unclear as to what it refers and it seems that it should be deleted.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 8 stands rejected under 35 U.S.C. 102(b) as being anticipated by Hecker, pn 1,695,761.

Hecker discloses a cutting head assembly with every structural limitation of the claimed invention including a first head member (e.g., 10,11), wherein the first head member includes a first set of returns (e.g., the notched areas of 10), and wherein the first head member is adjustably connected to a second head member (e.g., 2, 3, 4) including a second set of returns (e.g., the notched areas of 4); a cutting member (e.g., 9) having a first end, a second end, a length and a width, wherein the first end and the second end are secured to the cutting head and the length of the cutting member is positioned about the first and second sets of returns in a serpentine configuration, and wherein a leg of the cutting member extends across an aperture formed through the cutting head; and a cutting member tensioning device (e.g., 13, 14) disposed between

and adjustably engaging the first head member (e.g., portion 10 of the first head member) and the second head member (e.g., portion 3 of the second head member).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hecker, pn 1,695,761 in view of Larsen, pn 1,045,988.

Hecker lacks each set of returns having a height substantially equal to a width of the cutting member. Larsen discloses a cutting assembly with such a cutting member support configuration for providing a desired cutting operation; for example, the cutting support configuration of Larsen provides for the cutting members to be disposed in substantially in the same plane across the aperture. Therefore, it would have been obvious to one having ordinary skill in the art to provide the cutting member support configuration of Stuart for the obvious benefits including that described above.

7. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasile, pn 3,554,253.

Vasile discloses a cutting head assembly (e.g., see Figures 5-7) with almost every structural limitation of the claimed invention including a cutting head (e.g., 132), the cutting head including a first set of returns (e.g., 136 on the right side of Fig. 5) and

Art Unit: 3724

a second set of returns (e.g., 136 on the left side of Fig. 5); a cutting member (e.g., 138, 140) formed of a strip of material and having a first end that is secured to the cutting head, a second end that is secured to the cutting head, and a length, wherein the length of the cutting member is positioned about the first and second sets of returns in a serpentine configuration, and a leg of the cutting member (e.g., 138c-j; 140c-j) extends across an aperture formed through the cutting head.

Vasile lacks the specific cutting member tensioning configuration that includes a first head member, a second head member and a cutting member tensioning device. However, the Examiner takes Official notice that such cutting member tensioning configurations are old and well known in the art and provide various well known benefits including facilitating tensioning and untensioning of the cutting member to assist in assembling and disassembling the cutting member from the cutting assembly, as well as re-tensioning the cutting member when the cutting member loosens during usage due to stretching of the cutting member or the like. Larsen, pn 1,045,988 (e.g., see Fig. 1) and Nelson, pn 1,959,962 (e.g., see Fig. 1) each disclose such a cutting member tensioning configuration, wherein each includes a first head member, a second head member and cutting member tensioning device including a plurality of screws, wherein the tensioning configuration is used to tension a cutting member mounted in a serpentine configuration. Further, Cole et al., pn 5,343,623 (e.g., see Fig. 2) and Mendenhall, pn 5,911,808 (e.g., see Fig. 8) each provide evidence that it is known to provide a cutting member tensioning configuration that includes a first head member, a second head member and cutting member tensioning device including a plurality of

Art Unit: 3724

screws for a cutting member, the cutting member being in the form of a flat strip of material. Therefore, it would have been obvious to one having ordinary skill in the art to provide such a cutting member tensioning configuration on the cutting assembly of Vasile for the well known benefits including those described above.

Additionally regarding claim 1, Vasile lacks a specific disclosure of the dimensions of the cutting member. However, to provide a cutting member having such dimensions would be the mere discovery of the optimum or workable ranges within the general conditions of the prior art by routine experimentation and therefore obvious to one having ordinary skill in the art.

### ***Response to Arguments***

8. Applicant's arguments regarding claims 8 and 9 filed April 26, 2004 have been fully considered but they are not persuasive.

Applicant argues that (1) Hecker is non-analogous art and is not relevant to the issue of patentability of the present invention under 35 USC 102 or 35 USC 103 and (2) Hecker does not disclose cutting head assembly including a cutting member formed of a strip of material including a width.

Regarding (1), it is respectfully submitted that applicant's argument is not understood. The prior art rejection to claim 8 has been made under 35 USC 102, and whether prior art is analogous is not a consideration in a rejection under 35 USC 102. As relied upon in MPEP 2131.05,

“Arguments that the alleged anticipatory prior art is nonanalogous art or teaches away from the invention or is not recognized as solving the problem solved by the claimed invention, [are] not germane to a rejection under section 102.” *Twin Disc, Inc. v. United States*, 231 USPQ 417, 424 (Cl. Ct. 1986) (quoting *In re Self*, 671 F.2d 1344, 213 USPQ 1, 7 (CCPA 1982)).

Regarding (2), it is again respectfully submitted that applicant's argument is not understood. Hecker discloses a cutting member in the form of a wire that clearly is in strip form and has a width and a thickness. It is acknowledged that the width and the thickness of a wire are both equal to the diameter of the wire and thus equal to each other. But, the wire clearly has a width and a thickness. Further, a wire clearly can be considered to be a strip of material. According to Webster's New World dictionary, Third College Edition, "strip" is defined as "a long, narrow piece." According to dictionary.com, strip is defined as "A long narrow piece, usually of uniform width." Clearly, a wire meets these definitions. To obviate the rejection under 35 USC 102(b) of claim 8, it is suggested to simply make the following amendments: in line 5, insert --substantially flat-- before "strip"; in line 6, insert -- , a thickness-- after "axis"; and in line 7, insert --wherein the width is greater than the thickness, -- or the like.

9. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection. It is acknowledged that for at least the reasons argued by applicant, the prior art rejection over Hecker in view of Boos has been withdrawn.



**Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (703)308-1404. The examiner can be reached Monday through Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (703)308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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